

ORDER NO. 1765

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Robert G. Taub, Vice Chairman;
Mark Acton;
Tony Hammond; and
Nanci E. Langley

Competitive Product Prices
Global Expedited Package Services 3 (MC2010-28)
Negotiated Service Agreement

Docket No. CP2013-68

ORDERING APPROVING A GLOBAL EXPEDITED PACKAGE SERVICES 3
NEGOTIATED SERVICE AGREEMENT

(Issued June 26, 2013)

I. INTRODUCTION

The Postal Service seeks to include a Global Expedited Package Services (GEPS) 3 contract (Agreement) within the GEPS 3 product.¹ For the reasons discussed below, the Commission approves the Postal Service's request.

¹ Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, June 17, 2013 (Notice).

II. BACKGROUND

The Commission approved the addition of GEPS 3 to the competitive product list in Order No. 503, following consideration of the Postal Service's request in Docket No. MC2010-28.² The request was based on Governors' Decision No. 08-7. *Id.* at 7. The Commission concurrently established the GEPS 3 agreement filed in related Docket No. CP2010-71 as the baseline agreement for comparing potentially functionally equivalent agreements proposed for inclusion within the GEPS 3 product. *Id.*

The Agreement is a successor to the agreement approved in Docket No. CP2012-31, and is with the same customer. Notice at 3. The Agreement is intended to take effect July 8, 2013, following the July 7, 2013 expiration of the existing agreement.³ It is set to expire 1 year after its effective date. *Id.* Attachment 1 at 7.

In Order No. 1750, the Commission provided public notice of the Postal Service's filing; established the instant docket for consideration of the filing's consistency with applicable statutory policies and Commission regulations; appointed a Public Representative; and provided interested persons with an opportunity to comment.⁴ On June 20, 2013, Chairman's Information Request No. 1 was issued.⁵ In response, the Postal Service filed a revised Excel workbook and certified statement required by 39 C.F.R. § 3015.5(c)(2).⁶

² See Docket Nos. MC2010-28 and CP2010-71, Order Approving Global Expedited Package Services 3 Negotiated Service Agreement, July 29, 2010, at 8 (Order No. 503).

³ *Id.* The Commission recently granted two brief extensions of the Docket No. CP2012-31 agreement (from June 10, 2013 to June 30, 2013 and from June 30, 2013 to July 7, 2013). The second extension was granted after the successor agreement was filed and ensures that there is no gap between the expiration of the Docket No. CP2012-31 agreement and the effective date of this Agreement. See Docket No. CP2012-31, Order No. 1732, Order Granting Motion for Temporary Relief, May 24, 2013; Docket No. CP2012-31, Order No. 1751, Order Granting Motion for Temporary Relief, June 18, 2013.

⁴ Notice and Order Concerning Additional Global Expedited Package Services 3 Negotiated Service Agreement, June 18, 2013 (Order No. 1750).

⁵ Chairman's Information Request No. 1, June 20, 2013.

⁶ Response of the United States Postal Service to Chairman's Information Request No. 1, June 24, 2013. The revised workbook removes the pricing formula set out in the initial filing, which appeared to have not been applied in several of the workbook's subsequent calculations.

III. THE POSTAL SERVICE'S POSITION

The Postal Service asserts that its filing demonstrates that the Agreement complies with the requirements of 39 U.S.C. § 3633, is functionally equivalent to the baseline agreement, and requests that the Agreement be included within the GEPS 3 product. Notice at 2. It asserts that the Agreement fits within the draft Mail Classification Schedule language for the GEPS 3 product. *Id.* at 3. The Postal Service also asserts that the Agreement and the baseline agreement possess similar cost and market characteristics and the same functional terms, but states that prices may differ. *Id.* at 3-4. The Postal Service identifies numerous differences between the Agreement and the baseline agreement, but asserts that these differences do not affect the fundamental service being offered or the fundamental structure of the Agreement.⁷

IV. COMMENTS

The Public Representative filed comments in response to Order No. 1750.⁸ No other comments were received.

Based upon his review of the Postal Service's filing, including the supporting financial model and subsequent revision filed under seal with the Commission, the Public Representative concludes that the Agreement should generate sufficient revenues to cover costs and satisfy the requirements of 39 U.S.C. § 3633. *Id.* at 2-3. He states that he is unable to discern from the information provided in the financial model whether the price floors and ceilings set forth in Governor's Decision No. 08-7 have been applied. *Id.* at 3-4. The Public Representative also states that he agrees with the Postal Service's assertion that differences between the Agreement and the baseline contract do not affect either the fundamental service the Postal Service is

⁷ Differences include, among others, revisions to existing articles; the deletion of an article relating to service guarantees; the renumbering of several articles; and inclusion of new articles. *Id.* at 5-7.

⁸ Public Representative Comments on Postal Service Notice of Filing an Additional Global Expedited Package Services 3 Negotiated Service Agreement, June 25, 2013 (PR Comments).

offering or the fundamental structure of the contract. *Id.* at 3. He concludes that the Agreement is functionally equivalent to the baseline agreement. *Id.*

V. COMMISSION ANALYSIS

The Commission's responsibilities in this case are to ensure that the Agreement: (1) is functionally equivalent to the baseline Agreement; and (2) satisfies the requirements of 39 U.S.C. § 3633 and applicable Commission rules.

Functional equivalence. The Commission has reviewed the Postal Service's reasons for asserting that the Agreement shares similar cost and market characteristics with the baseline Agreement; meets the pricing formula and falls within the classification established in Governors' Decision No. 08-7; and comports with 39 U.S.C. § 3633 and related Commission rules. It also has considered the Public Representative's comments. The Commission concludes that the Agreement is substantially similar to the baseline agreement and that the differences between them do not undermine a finding of functional equivalency. The Commission therefore finds that the instant Agreement may be included within the GEPS 3 product.

Cost considerations. The Commission has reviewed the Postal Service's filing, including supporting financial analyses provided under seal, and the Public Representative's Comments. Based on this review, the Commission finds that the Agreement should cover its attributable costs. 39 U.S.C. § 3633(a)(2). Additionally, it finds that the Agreement should not result in competitive products being subsidized by market dominant products, satisfying the requirements of 39 U.S.C. § 3633(a)(1). It also finds the Agreement should have a positive effect on the contribution of competitive products to institutional costs, in furtherance of 39 U.S.C. § 3633(a)(3). Accordingly, a preliminary review of the Agreement indicates it is consistent with the section 3633(a) provisions applicable to rates for competitive products. The Commission therefore finds that the Agreement is appropriately included within the GEPS 3 product.

Follow-up submissions. The Postal Service shall promptly notify the Commission if the effective date of the Agreement differs from the effective date identified in the

Notice. Upon termination of the Agreement by either party, the Postal Service shall promptly inform the Commission of this development and the date of termination. In addition, within 30 days of the termination of the Agreement, the Postal Service shall file costs, volumes, and revenues associated with the Agreement, including any penalties paid, disaggregated by weight and country group.

VI. ORDERING PARAGRAPHS

It is ordered:

1. The Agreement filed in Docket No. CP2013-68 is included within the Global Expedited Package Services 3 (MC2010-28) product.
2. The Postal Service shall promptly notify the Commission if the effective date of the Agreement differs from the date identified in the Notice.
3. The Postal Service shall promptly notify the Commission of termination of the Agreement by either party.
4. Within 30 days of the termination of the Agreement, the Postal Service shall file costs, volumes, and revenues, including any penalties paid, disaggregated by weight and country group.

By the Commission.

Ruth Ann Abrams
Acting Secretary